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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

MARIZZA E., Appellant, v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY, TYFFANI E., and BIANKA E., Appellees.	2 CA-JV 2008-0071 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF COCHISE COUNTY

Cause No. JD200700046

Honorable James L. Conlogue, Judge

AFFIRMED

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V Á S Q U E Z, Judge.

¶1 Marizza E. appeals from the juvenile court's June 2008 order terminating her parental rights to her children, Tyffani, born in 1995, and Bianka, born in 1998. As grounds for termination, the court found Marizza unable to discharge parental responsibilities because of a mental illness or mental deficiency reasonably expected to continue for a prolonged, indeterminate period, *see* A.R.S. § 8-533(B)(3), and also found she had substantially neglected or wilfully refused to remedy the circumstances that caused the children to remain in out-of-home placements for more than nine months, *see* § 8-533(B)(8)(a). Marizza contends the court's findings in support of both grounds for termination were clearly erroneous. Because we affirm the court's decision on the ground of persistent mental illness, we do not address the alternative time-in-care ground. *See Pima County Severance Action No. S-110*, 27 Ariz. App. 553, 554, 556 P.2d 1156, 1157 (1976) (if evidence supports any one ground for severance, reviewing court need not consider challenge on other grounds).

¶2 Under § 8-533(B)(3), termination is warranted if the juvenile court finds by clear and convincing evidence "[t]hat the parent is unable to discharge the parental responsibilities because of mental illness, mental deficiency or a history of chronic abuse of dangerous drugs, controlled substances or alcohol and there are reasonable grounds to believe that the condition will continue for a prolonged indeterminate period." Marizza contends the court lacked sufficient evidence to terminate her parental rights on this ground because "[t]here is significant evidence to support [her] position that . . . she was capable of making the progress needed to be able to parent her children at some point in the

foreseeable future." Our inquiry, however, is not whether some evidence in the record would support Marizza's challenge to termination; rather, it is whether the record is devoid of reasonable evidence to support the court's findings. *See Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, ¶ 2, 982 P.2d 1290, 1291 (App. 1998) (termination order not disturbed on appeal unless no reasonable evidence supports it); *see also Lashonda M. v. Ariz. Dep't of Econ. Sec.*, 210 Ariz. 77, ¶ 13, 107 P.3d 923, 927 (App. 2005) (reviewing court does not reweigh evidence).

¶3 The court's termination order arises from the second dependency proceeding related to Tyffani and Bianka. The children were previously removed from their parents' care in 2001as a result of domestic violence between the parents, Marizza's consequent arrest, and their father's substance abuse. The children were returned to the home, and the first dependency proceeding was dismissed after the parents successfully completed their case plan, which included, for Marizza, participating in a psychological evaluation, counseling, and classes to improve her parenting skills and prevent future incidents of domestic violence.

¶4 In June 2007, the Arizona Department of Economic Security (ADES) again took the children into protective custody and filed a dependency petition alleging that Marizza had permitted Tyffani to spend five nights a week with an inappropriate caregiver and had stated she was unable to control the twelve-year-old's behavior. According to the petition, Marizza also had failed to comply with ADES's requests that she submit to a urine screen for substance abuse and allow ADES to view her home and interview Bianka. The children were adjudicated dependent in August 2007 after Marizza admitted amended

allegations in the petition, including an allegation that, shortly after the children's removal, a urine sample she submitted had tested positive for methamphetamine. Both children remained in foster care throughout the ensuing dependency.

¶5 Psychological evaluations conducted during the 2001 and 2007 dependency proceedings yielded similar findings by two different psychologists; both diagnosed Marizza as suffering from a personality disorder. Philip Balch, a clinical psychologist, testified at the termination hearing that, by definition, a personality disorder is a habitual, ingrained, chronic pattern of maladaptive behavior. Consequently, the disorder is "resistant to successful treatment," which requires a high level of motivation from the patient and capacity to change.[1] Balch further opined that the passive-dependent personality features Marizza exhibited negatively affected her ability to parent because she was unlikely to make parenting decisions based on her children's best interests.

¶6 Although there was evidence at the hearing that Marizza had made some progress in treatment for a depressive disorder from which she also suffered, the juvenile court found she had "substantially neglected to participate in the therapeutic interventions [that were] aimed directly at her personality disorder." In particular, she failed to participate in therapy with Margaret Johnson, a clinical psychologist with over twenty years' experience treating personality disorders, who had been specifically selected to work with Marizza. Like Balch, Johnson testified that personality disorders are of a "long-standing nature," "not . . . easily resolved," "embedded in the person," and "very difficult to change" and that a

[1]Indeed, Dr. Balch testified that the consistency of the diagnoses in the two evaluations, six years apart, "speaks to . . . how . . . unlikely it is to change."

client must therefore be persistent about treatment to effect any behavioral change. Viewed in the light most favorable to sustaining the court's ruling, *see Manuel M. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 205, ¶ 2, 181 P.3d 1126, 1128 (App. 2008), evidence suggests Marizza lacked the persistent motivation required to successfully treat her personality disorder.

¶7 Similarly, we are not persuaded by Marizza's argument that the successful resolution of the 2001 dependency proceeding demonstrated her capacity to "mak[e] progress and appropriately parent[]" her daughters. We agree with the state that the juvenile court could also have reasonably inferred that, despite whatever temporary progress Marizza had made while services were ongoing in the first dependency, her underlying mental illness persisted and led to her recurrent failure to protect her children.

¶8 The juvenile court is "in the best position to weigh the evidence, judge the credibility of the parties, observe the parties, and make appropriate factual findings." *Pima County Dependency Action No. 93511*, 154 Ariz. 543, 546, 744 P.2d 455, 458 (App. 1987).

We conclude reasonable evidence supports the court's finding of grounds to believe Marizza's disabling mental illness will continue for a prolonged, indeterminate period. *See* § 8-533(B)(3). Accordingly, we affirm the court's termination order.

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GARYE L. VÁSQUEZ, Judge

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

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J. WILLIAM BRAMMER, JR., Judge